IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

OP.No. 13717 of 1999(S)
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AGAINST THE ORDER DATED 31/08/1998 IN RA 136/COCH/1997 IN ITA 230/COCH/91 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

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PETITIONER/ASSESSEE:
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SHRI.CLEETUS VINCENT,
C/O.OCEANIC BUILDING,
SAKTHIKULANGARA, QUILON.

BY ADV. SRI.C.KOCHUNNY NAIR
SRI.DALE P.KURIEN

RESPONDENT/REVENUE:
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THE COMMISSIONER OF INCOME-TAX,
TRIVANDRUM.

BY STANDING COUNSEL, GOVERNMENT OF INDIA (TAXES)
SRI.P.K.R.MENON (SR) & SRI.GEORGE K.GEORGE

THIS ORIGINAL PETITION HAVING CONE UP FOR ORDERS ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**H.L.DATTU, C.J. & K.T.SANKARAN, J.**

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**O.P.No.13717 of 1999-S &**
**C.M.P.No.22119 of 1999**

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Dated, this the 30th day of July, 2007

**JUDGMENT**

**H.L.Dattu, C.J.**

Delay in filing the petition is condoned.

(2) The assessee has filed this petition under Section 256(2) of the Income Tax Act, 1961 ('Act' for short), inter alia, requesting us to direct the Income Tax Appellate Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.230 of 1991 dated 11th March, 1997 for the assessment year 1980-81. The questions of law raised by the assessee are as under:

> "1. Whether the Tribunal was right in holding that the reassessment is not barred by limitation?
>
> 2. Whether the Tribunal was right in holding that it is Section 147(a) that applies?
>
> 3. Whether the Tribunal was right in holding that the assessee was bound to disclose that he had invested Rs.5,50,000/- more than what is stated in the sale document?
>
> 4. Whether the Tribunal was right in holding that the fact of unaccounted investment of Rs.5,50,000/- is a material fact relevant to that assessment year?
>
> 5. Whether the Tribunal was right in holding that the assessee has failed to disclose fully and truly all material facts regarding his income of the previous year?
>
> 6. Whether the finding of the Tribunal that the assessee has invested Rs.5.50,000/- is supported by any material?
>
> 7. Whether the finding of the Tribunal that the assessee has invested Rs.5,50,000/- is perverse, unreasonable and against law?
>
> 8. Whether the Tribunal was right in not holding that assessee is liable only for ½ of the investment?"

(3) The Tribunal has rejected the appeal filed by the assessee. The assessee had filed an application under Section 256(1) of the Act requesting the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.230 of 1991 for the assessment year 1980-81. The Tribunal has rejected the application.

(4) We have carefully perused the order passed by the Tribunal and also the questions of law raised by the assessee for consideration and decision by this Court. In our opinion, the questions of law raised by the assessee require consideration by this Court. Therefore, a direction requires to be issued to the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.230 of 1991 dated 11th March, 1997 for the assessment year 1980-81.

(5) Accordingly, the following:

**Order**

i) The petition is allowed.

ii) A direction is issued to the Tribunal to state the case and refer the questions of law that would arise in I.T.A.No.230 of 1991 dated 11.3.1997 for the assessment year 1980-81 for consideration and decision by this Court, as expeditiously as possible.

Ordered accordingly.

(**H.L.DATTU)**
**CHIEF JUSTICE**

**(K.T.SANKARAN)**
**JUDGE**

vns